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HOUSE OF REPRESENTATIVES

REPORT
No. 97-839

TAX ON FAILURES TO COMPLY WITH CERTAIN DETERMINATION LETTERS

SEPTEMBER 17, 1982.—Committed to the Committee of the Whole House on State of the Union and ordered to be printed

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Mr. ROSTENKOWSKI, from the committee on Ways and Means, submitted the following

REPORT

[To accompany H. R. 7094]

The Committee on Ways and Means, to whom was referred the bill (H.R. 7094) to amend the Internal Revenue Code of 1954 to impose a tax on failures to adhere to conditions of determination letters relating to independent management of the assets of multiemployer plans, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. SUMMARY

Under present law, if a favorable determination letter issued by the Internal Revenue Service is conditioned on certain requirements (including a requirement that the assets of a qualified plan be independently managed) and such a condition is violated by the plan trustees or plan administrator, the only remedy potentially available to the Internal Revenue Service is revocation of the trust's tax-exempt status. This disqualification sanction does not directly affect a plan trustee or administrator who violates the condition.

The bill would impose a new excise tax sanction on multiemployer plan trustees or administrators who violate an independent asset management condition in an agreed upon determination letter.

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II. EXPLANATION OF THE BILL

Present Law

Background

In 1976, the Internal Revenue Service revoked the tax-exempt status of the Teamsters' Central States Pension Fund, a multiemployer pension plan, stating that the Fund was not being managed for the exclusive benefit of the participants and beneficiaries. The action was due to evidence of large-scale misuse of Fund assets. Fund assets (now approximately $3.5 billion) were placed under the control of independent asset managers (the Equitable Life Assurance Society and Victor Palmieri and Company, Inc.) as a condition of the reinstatement of the Fund's exempt status. The Fund's current contracts (entered into pursuant to the 1977 reinstatement) with the independent asset managers expire October 3, 1982.

On November 11, 1981, the Internal Revenue Service issued a new favorable determination letter to the Fund. This letter includes an independent asset management condition. The condition was agreed to in writing on behalf of the Fund. Under present law, revocation of the Fund's tax-exempt status is the only remedy potentially available to the Internal Revenue Service if the condition is violated.

Revocation of tax-qualification

Under present law if the tax exemption of a trust forming a part of a pension plan is revoked (1) the trust is no longer exempt from tax, (2) plan participants and beneficiaries are taxed on plan benefits as the benefits vest, and (3) deductions for employer contributions may be disallowed. However, these disqualification sanctions are ineffective with respect to a plan like the Teamsters' Central States Pension Fund. The Fund has approximately 500,000 participants and beneficiaries and thousands of contributing employers. Any effort to establish an annual income inclusion for each participant or beneficiary is clearly impractical. Also, disallowance of employer deductions could seriously affect contributing employers and impair the Fund's ability to pay benefits to participants and beneficiaries.

The disqualification sanctions do not directly impact plan trustees or the plan administrator.

Reasons for Change

Under present law, if a favorable determination letter is conditioned upon a requirement that the assets of the plan be indepently managed and the condition is violated by the plan trustee or plan adminstrator, the only remedy potentially available to the Internal Revenue Service is revocation of the trust's tax-exempt status. This disqualification sanction does not directly affect a plan trustee or plan administrator who violates the condition. Accordingly, to deter violations of such conditions and to more effectively safeguard plan assets, the committee concluded that it was necessary to provide an additional remedy.

Explanation of Provisions

The bill would impose a new excise tax sanction in any case in which (1) a favorable determination letter issued by the Internal Revenue Service to a multiemployer plan is conditioned upon some or all plan assets being held by a qualified (e.g., professional, and of national stature) independent asset manager, (2) the determination letter is agreed to in writing by or on behalf of the plan, (3) the Secretary has not agreed in writing to a withdrawal of the condition, and (4) a plan trustee or administrator takes any action which he knows (or should know) will result in a violation of the independent asset management condition. For example, where a trustee is unaware of a violation when it occurred, the sanction would be imposed if the trustee failed to take corrective action after he knows (or should have known) of it. The sanction applies where the independent asset manager condition is violated after the effective date of the bill whether or not the condition was agreed to before such effective date.

The tax is imposed on the trustee or administrator for each month for which the violation is in effect in an amount equal to one-half of one percent of the fair market value of the assets involved in the violation. However, the amount imposed with respect to a plan for any month cannot exceed $400,000.

Under the bill, the liability of trustees or administrators with respect to a violation is joint and several. In addition, if a trustee's assets are not sufficient to pay the tax for any month, the organization which appointed the trustee is secondarily liable.

The bill also provides that if a taxpayer establishes to the satisfaction of the Secretary of the Treasury that an action (or failure to act) is due to reasonable cause, and that the taxpayer has taken action to correct the violation, then all or a part of the excise tax may be abated. The Secretary of the Treasury is to consult with the Secretary of Labor before abating any such tax.

The bill follows the request of the Administration that the Congress take prompt action on legislation to provide an additional remedy (i.e., other than revocation of tax-qualification) to more effectively safeguard plan assets for the benefit of participants and beneficiaries under a multiemployer plan.

Effective Date

The bill applies with respect to actions taken (or not taken) by a plan trustee or plan administrator after September 14, 1982.

III. EFFECT OF THE BILL ON THE BUDGET AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

Budget Effects

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made about the effect on the budget of this bill, H.R. 7094. The committee estimates that the provisions contained in the bill, H.R. 7094 will have a negligible revenue impact.

The Treasury Department agrees with this statement.

Vote of the Committee

In compliance with clause 2(l)(2)(B) of Rule XI of the Rules of the House of Representatives, the following statement is made about the vote of the committee on the motion to report the bill, as amended. The bill, H.R. 7094, was ordered favorably reported by voice vote.

IV. OTHER MATTERS TO BE DISCUSSED UNDER HOUSE RULES

In compliance with clauses 3(l)(3) and 2(l)(4) of Rule XI of the Rules of the House of Representatives, the following statements are made with respect to the committee action on H.R. 7094.

Oversight Findings

With respect to subdivision (A) of clause 2(l)(3) (relating to oversight findings), the committee advises that it was as a result of the committee's oversight activities with respect to independent asset management under certain multiemployer pension plans that the committee concluded that it is appropriate to enact the provisions contained in the bill.

The Oversight Subcommittee of the Committee on Ways and Means held a hearing on the subject on July 26, 1982, and transmitted a report and recommendations to the full committee on August 3, 1982.

New Budget Authority and Tax Expenditures

With respect to subdivision (B) of clause 2(l)(3), after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by this bill involve no new budget authority or new or increased tax expenditures.

Consultation with Congressional Budget Officials on Budget Estimates

With respect to subdivision (C) of clause 2(l)(3), the committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates (as indicated in part III of this report) and agrees with the committee's budget estimate.

Oversight by Committee on Government Operations

With respect to subdivision (D) of clause 2(l)(3), the committee advises that no oversight findings or recommendations have been submitted to the committee by the Committee on Government Operations regarding the subject matter of this bill.

Inflationary Impact

In compliance with clause 2(l)(4), the committee states that the enactment of this bill is not expected to have an inflationary impact on prices and costs in the operation of the national economy.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

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Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

Sec. 4971. Taxes on failure to meet minimum funding standards.
Sec. 4972. Tax on excess contributions for self-employed individuals.
Sec. 4973. Tax on excess contributions to individual retirement accounts, certain 403(b) contracts, certain individual retirement annuities, and certain retirement bonds.
Sec. 4974. Tax on certain accumulations in individual retirement accounts.
Sec. 4975. Tax on prohibited transactions.
Sec. 4976. Tax on failure to adhere to conditions of determination letter relating to independent management of assets.

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Sec. 4976. TAX ON FAILURE TO ADHERE TO CONDITIONS OF DETERMINATION LETTER RELATING TO INDEPENDENT MANAGEMENT OF ASSETS

(a) Tax Imposed.—If—

(1) any independent asset management condition to a determination letter has been agreed to in writing by or on behalf of any multiemployer plan (within the meaning of section 414(f)),

(2) the Secretary has not agreed in writing to a withdrawal of such condition, and

(3) any trustee or plan administrator with respect to the plan—

(A) takes any action which he knows (or should know) will result in a violation of such condition, or

(B) fails to take all reasonable action to prevent or correct any such violation,

then there is hereby imposed a tax with respect to the action (or failure to act) of such trustee or plan administrator for each calendar month during any part of which such violation is in effect.

(b) AMOUNT OF TAX.—In the case of any plan, the amount of the tax imposed by this section for any calendar month shall be the lesser of—

(1) one-half of 1 percent of the fair market value of the plan assets involved in the violation on the day during such calendar month on which such fair market value is the highest, or

(2) $400,000.

(c) JOINT AND SEVERAL LIABILITY.—The liability under this section of the trustees and plan administrator with respect to any violation shall be joint and several.

(d) SECONDARY LIABILITY.—If any trustee does not have sufficient assets to pay the tax imposed by this section for any calendar month, his liability for such tax shall be treated as also the liability of the organization or other person which appointed such trustee.

(e) DEFINITIONS.—For purposes of this section—

(1) DETERMINATION LETTER.—The term "determination letter" means a letter of determination by the Secretary as to the qualification of the plan under section 401 and as to the exemption under section 501 of the trust to which such plan relates.

(2) INDEPENDENT ASSET MANAGEMENT CONDITION.—The term "independent asset management condition" means a condition relating to a requirement that some or all of the assets of the plan be held by qualified independent managers (as defined in paragraph (38) of section 3 of the Employee Retirement Income Security Act of 1974).

(f) ABATEMENT OF TAX IN CERTAIN CASES.—If the taxpayer establishes to the satisfaction of the Secretary—

(1) that his action (or failure to act) is due to reasonable cause, and

(2) that he has taken action to correct the violation,

then the Secretary may (after consultation with the Secretary of Labor) abate part or all of the tax imposed by subsection (a).

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